IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *O'Neill v. British Columbia (Minister of Health),* 2025 BCSC 601

Date: 20250401
Docket: S244011
Registry: Vancouver

Between:

Gaye O'Neill, Administrator of the Estate of Sam O'Neill, Dr. Jyothi Jayaraman and Dying with Dignity Canada

Plaintiffs

And

His Majesty the King in Right of the Province of British Columbia, as represented by the Minister of Health, Vancouver Coastal Health Authority and Providence Health Care Society

Defendants

Before: The Honourable Chief Justice Skolrood

Reasons for Judgment

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Place and Date of Hearing:	Vancouver, B.C. March 4, 2025
Place and Date of Judgment:	Vancouver, B.C. April 1, 2025

Introduction

[1] The plaintiffs in this litigation challenge certain policies enacted by the defendants that permit faith-based organizations to decline to provide Medical Assistance in Dying ("MAID") services in facilities operated by those organizations.

[2] The underlying facts giving rise to the constitutional challenge involve the tragic circumstances of Ms. Sam O'Neill who was admitted to St. Paul's hospital in early 2022 and who was diagnosed with an advanced form of cervical cancer. St. Paul's is operated by the defendant Providence Health Care Society ("Providence"), an organization affiliated with the Catholic Church.

[3] Ms. O'Neill was assessed and approved for MAID in February 2023. However, St. Paul's hospital does not provide MAID services, as a result of which Ms. O'Neill was transferred to another facility. The plaintiffs allege that this transfer caused her considerable pain and distress.

[4] The plaintiffs claim that the policies of the defendants that permit St. Paul's to decline to provide MAID services and that required Ms. O'Neill's transfer to another facility violate ss. 2(a) and 7 of the *Canadian Charter of Rights and Freedoms*.

[5] The named defendants include His Majesty the King in Right of the Province of British Columbia as represented by the Minister of Health (the "Province"), Vancouver Coastal Health Authority ("VCHA") and Providence.

[6] The current applications before the Court have been brought by eight organizations each seeking leave to intervene in the proceeding. Those eight organizations are:

a) Canadian Civil Liberties Association ("CCLA");

b) British Columbia Humanist Association ("BCHA");

c) Canadian Constitution Foundation ("CCF");

d) Canadian Centre for Christian Charities ("CCCC");

e) Canadian Physicians for Life ("CPL");

f) Christian Legal Fellowship ("CLF");

g) Delta Hospice Society ("DHS"); and

h) Evangelical Fellowship of Canada ("EFC").

Legal Principles

[7] The principles governing intervention applications are well-established.

[8] This Court has inherent jurisdiction to grant intervenor status in appropriate cases and to make orders relating to intervenors' participation in a proceeding: *Choi v. Brook at the Village on False Creek Developments Corp.*, 2013 BCSC 1535 at para. 7.

[9] As explained by the Court of Appeal in *Equustek Solutions Inc. v. Google Inc.,* 2014 BCCA 448 at paras. 10–11 [*Equustek*], there are three broad threshold considerations that apply to applications to intervene:

a) the nature of the group seeking intervenor status;

b) the directness of the group's interest in the matter; and

c) the suitability of the issues in the appeal to an intervention.

[10] Once the Court is satisfied of these threshold considerations, it must also be convinced that interventions will be of assistance to it. The decision to grant intervenor status is ultimately a discretionary one: *Equustek* at para. 11.

[11] There are two avenues to obtain intervenor status. An applicant seeking leave to intervene must show either that it has a direct interest in the outcome of a proceeding, or that it represents a public interest in a public law issue: *Araya v. Nevsun Resources Ltd.,* 2017 BCCA 402 at para. 10; *Equustek* at paras. 5–9.

[12] Direct interest in a proceeding arises when the legal rights of the proposed intervenor will be affected or when any additional legal obligations would be imposed resulting in a direct prejudicial effect: *Squamish Nation v. British Columbia (Environment),* 2019 BCCA 65 at para. 12, citing *North Pender Island Local Trust Committee v. Conconi,* 2010 BCCA 405 at para. 6.

[13] When a proposed intervenor does not have a direct interest in the appeal, intervenor status may still be granted if it represents a public interest in a public law issue. The well-settled legal criteria that apply to intervenor status under the public interest route are as follows:

a) Does the proposed intervenor have a broad representative base?

b) Does the case legitimately engage the proposed intervenor's interests in the public law issue raised?

c) Does the proposed intervenor have a unique and different perspective that will assist the Court in the resolution of the issues?

d) Does the proposed intervenor seek to expand the scope of the matter by raising issues not raised by the parties?

See *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCCA 282 at para. 14; *Squamish Nation* at para. 13.

[14] In deciding whether to grant public interest intervenor status, the Court is concerned with ensuring that important points of view are not overlooked: *Equustek* at para. 8. However, such interventions must be able to present a perspective that is not already before the Court without expanding the litigation by raising matters that are not already part of it: para. 9.

[15] As Justice Bennett explained in *FortisBC Inc. v. Shaw Cablesystems Limited,* 2010 BCCA 606 at para. 6, there is a delicate balance to be struck between ensuring that a proposed intervenor adds a different perspective and avoiding the

expansion of the focus of the litigation to the extent that the dispute is taken away from those involved.

[16] I would add that whether an existing party consents to, opposes, or takes no position on an application to intervene is a factor that the Court may consider but it is not determinative. Ultimately, as the cases note, the decision lies within the discretion of the Court as part of its authority to control its own process.

Parties' Positions

[17] Notwithstanding the discretionary nature of the decision, it is useful to note the positions taken by the parties to the litigation on the intervention applications.

[18] The parties collectively take no position on the proposed intervention of each of the applicants, with the exception of the CCF. The Province and VCHA submit that intervenors should be permitted a maximum of 10 pages for their written submissions and VCHA submits that each intervenor should be limited to 30 minutes for oral submissions.

[19] The plaintiffs and VCHA oppose the application of the CCF in its entirety, while the Province simply objects to the CCF addressing a proposed argument concerning whether moral judgements and lifestyle choices are protected by s. 2(a) of the *Charter*.

[20] The plaintiffs also take the position that the proposed interventions of CCCC, CPL, CLF, DHS and EFC be limited so as to avoid duplication and to minimize the prejudice to the plaintiffs of having to respond to numerous aligned parties.

Discussion

CCLA and BCHA

[21] I am satisfied that each of the CCLA and BCHA satisfy the criteria for the granting of intervenor status. Both have an established history of engaging with the issues raised by the pleadings, including by way of interventions in relevant court

proceedings, and each brings to bear a unique and different perspective that will assist the Court in determining the issues raised by the parties.

[22] I will return to the terms of the interventions below.

CCCC, CPL, CLF, DHS and EFC

[23] I am similarly of the view that each of CCCC, CPL, CLF, DHS and EFC meet the criteria for being granted intervenor status. I appreciate the plaintiffs' point that all of these parties are generally aligned in interest, both amongst themselves and with the defendants, however I am satisfied that each brings a unique and different perspective to the issues.

[24] For example, CCCC represents a number of Christian charities who operate in the healthcare, social and community services sphere. That organizational perspective is different from the perspective offered by CPL and CLF whose membership comprises individuals who practise in the medical and legal professions respectively. DHS is an organization that has operated in the hospice care sphere and has advocated for MAID-free palliative care facilities. Finally, EFC describes itself as the largest organization of Canadian Protestant Evangelical Christians, with a demonstrated history of involvement in MAID issues.

[25] The issue to my mind is not whether these organizations should be granted intervenor status, but whether limits should be placed on the scope of the interventions for the reasons advanced by the plaintiffs. I agree with the plaintiffs that there is at least the potential for duplication in the submissions of these proposed intervenors given their alignment in interest and the relatively narrow focus of the pleadings. However, I have come to the conclusion that it is too early in the process to determine what issues and arguments each proposed intervenor should be permitted to address. The record has not yet been developed and all of the anticipated arguments identified in the applications are framed in very general terms.

[26] Accordingly, it is at this stage appropriate to grant the intervention applications generally, on terms I will return to below, with a direction that the

intervenors aligned with the position of the defendants will consult one another and work together to avoid duplication. There will be an opportunity closer to the hearing date for the plaintiffs to address any inappropriate duplication in the intervenors' submissions, or any other objections that might arise, and for the Court to modify their involvement in the hearing accordingly.

CCF

[27] While I have found it is premature to direct what issues and arguments the other proposed intervenors will be entitled to address, I take a different view of the CCF's proposed arguments concerning moral judgements and lifestyle choices.

[28] The position proposed to be advanced by the CCF is that "lifestyle" choices should not be excluded from protection under s. 2(a) of the *Charter*. The CCF takes issue with decisions emanating from the courts in Ontario, Alberta and British Columbia that have held that s. 2(a) only protects conscientiously-held beliefs that are part of a broader system of beliefs with "depth and systemic coherence": see *Mills v. Corporation of the City of Calgary*, 2024 ABKB 256 at para. 102; see also *Costa, Love, Badowich and Mandekic v. Seneca College of Applied Arts and Technology*, 2022 ONSC 5111 at paras. 62–63. It has further been held that so-called lifestyle choices that do not relate to a larger value system are excluded from protection under s. 2(a): *Affleck v. The Attorney General of Ontario*, 2021 ONSC 1108 at para. 51.

[29] The CCF wishes to argue that this represents an overly restrictive approach to interpreting and defining freedom of conscience.

[30] Regardless of whether there is any merit to the CCF's position, this is not an issue that arises in the present litigation. There is no allegation in the pleadings that decision-making in respect of the life and death considerations arising in the MAID context involve "lifestyle" choices. Indeed, the factual circumstances and issues at play in this case differ significantly from the types of choices or beliefs considered in the cases cited by the CCF, which include belief in the benefits of raw milk (*Affleck*),

ethical non-monogamy (*Mills*) and vegetarianism (*Maurice v. Canada (Attorney General)*, 2002 FCT 69).

[31] In my view, permitting the CCF to advance this argument would amount to an unwarranted and impermissible expansion of the litigation beyond the scope framed by the parties.

[32] In its notice of application, the CCF identifies two other points that it proposes to address if granted leave to intervene:

a) Section 2(a) of the *Charter* protects closely-held moral judgements—whether religious or conscientious—and conscientious beliefs should be given the same robust protection as religious beliefs; and

b) Moral judgements should be protected under s. 2(a), whether or not those judgments are part of a coherent system of beliefs.

[33] Whether or not the CCF should be granted leave to intervene to address these two points turns on a consideration of the public interest factors identified at para. 13 above. In my view, the CCF's application does not satisfy two of these factors. Specifically, the case as framed by the parties does not legitimately engage the CCF's interests in the public law issues raised and the CCF does not bring to bear a unique and different perspective.

[34] As to the CCF's interest in the public law issues, Ms. Van Geyn, the CCF's litigation director, describes the primary objective of the CCF as preventing government overreach that infringes on constitutionally-protected rights and freedoms or undermines the principles of Canadian federalism. Ms. Van Geyn suggests in her supporting affidavit that the outcome of this litigation will "significantly affect the constitutional rights and freedoms of all Canadian citizens and permanent residents, particularly regarding whether these individuals possess a constitutionally protected right to live in accordance with their subjective moral beliefs…".

[35] In my view, the CCF is interested at a very general level in the *Charter* rights engaged by the plaintiffs' claims and its objective is to advance a particular theory about the scope of those rights as they relate to matters of conscience and morality. The CCF's interest is not however, grounded in the specific issues raised by the parties that are concerned with the ability of faith-based organizations to opt out of providing MAID services.

[36] The CCF makes the point that the CCLA is similarly an organization with a more general interest in questions of constitutional law and *Charter*-protected rights, yet its intervention application is not opposed. Respectfully, the CCLA has an established record of engaging on MAID issues, having been granted leave to intervene in the leading case of *Carter v. Canada (Attorney General)*, 2015 SCC 5, as well as in *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393.

[37] Further, organizations with a more direct connection to these issues, for example, CPL, will likely make similar arguments concerning the scope of the freedom of conscience guarantee, thus it is unlikely that the CCF would provide a different or useful perspective.

[38] For these reasons, and notwithstanding the forceful submissions of Ms. MacKinnon, the CCF's application is dismissed.

Written and Oral Submissions

[39] The terms of the proposed interventions are largely agreed to, apart from some minor differences concerning page limits for the intervenors' submissions. The plaintiffs submit that the written submissions of the various intervenors who are aligned in interest, amongst themselves and with the defendants, should be limited to eight pages in order to minimalize the potential for duplication. Certain of the proposed intervenors propose limits in the range of 15 to 20 pages.

[40] In my view, a uniform 10 page limit for each intervenor, as proposed by the Province and VCHA, is reasonable and will permit each intervenor to fairly and succinctly set out its position.

[41] During the hearing, I suggested that I would also determine the length of oral submissions for each intervenor as part of these reasons. Upon further reflection, however, I will defer that determination until closer to the hearing once the record has been established and written submissions exchanged.

Conclusion

[42] The applications for leave to intervene of the CCLA, BCHA, CCCC, CPL, CLF, DHS and EFC are therefore granted on the following terms:

a) The intervenor may submit written submissions not exceeding 10 pages in length at the trial of this action;

b) The intervenor's right to make oral submissions will be determined by the trial judge;

c) The intervenor shall not adduce evidence, examine witnesses, or otherwise supplement the record of the parties;

d) The style of cause will be amended to include the intervenor;

e) No costs will be awarded for or against the intervenor.

[43] The application of the CCF is dismissed.

"The Honourable Chief Justice Skolrood"